STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	)	
	)	Docket No. 01-0662
Investigation concerning Illinois Bell Telephone Company's compliance With Section 271 of the Telecommunications Act of 1996	)	Phase 2

BRIEF ON EXCEPTIONS OF WORLDCOM, INC.

Pursuant to 200.830 of the rules of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Section 200.830, WorldCom, Inc. ("WorldCom") hereby submits its Brief On Exceptions in response to the Administrative Law Judge's Proposed Final Order On Investigation ("Proposed Order") issued in the above-captioned matter on April 8, 2003.

I. INTRODUCTION

The Proposed Order goes to great lengths to find that SBC Illinois has satisfied its obligations under the various "checklist" items contained in Section 271(c)(2)(B) of the Telecommunications Act of 1996 ("TA96"). The Proposed Order correctly recognizes that problems continue with respect to several SBC Operations Support System ("OSS") issues that fall under checklist item number 2, including SBC Illinois' wholesale billing and Line Loss Notices ("LLNs"). However, the Proposed Order incorrectly relies on SBC promises that it will continue to work on correcting problems in reaching its conclusion that the Commission can, based on the record in this proceeding, determine that SBC Illinois has satisfied its Section 271 obligations. In this respect, the Proposed Order errs because it disregards precedent of the Federal Communications Commission

("FCC"), the record evidence and the fact that SBC Illinois' has the burden of proof in this proceeding. The Commission cannot rely as the Proposed Order would on SBC promises of future compliance, and the record demonstrates continuing problems with, among other things, wholesale billing, LLNs and SBC data integrity and performance measures.

More troubling, however, is the Proposed Order's treatment of the remedy plan issue. The Administrative Law Judge ("ALJ") determined that SBC Illinois' so-called "compromise" remedy plan should be adopted for Section 271 compliance purposes despite the Commission's previous pronouncements concerning the remedy plan that it approved in Docket 01-0120 and the Commission's stated intent that the nuances of that plan not be re-litigated here. Moreover, this conclusion unsupported by the record and shifts the burden of proof from SBC Illinois to Competitive Local Exchange Carriers ("CLECs") and Staff. The Proposed Order's conclusion on the remedy issue is also based on the faulty premise that the Docket 01-0120 remedy plan has the potential to impose excessive, punitive remedy payments despite what the ALJ apparently views is improved SBC wholesale performance. The Commission's Alternative Regulation decision concerning the proper incentives necessary to assure that SBC provides adequate retail service quality directly contradicts the Proposed Order's decision on what is needed to assure adequate wholesale service quality. The Proposed Order should therefore be modified to reject the compromise remedy plan for Section 271 purposes.

Finally, despite the recognition that SBC continues to have problems with SBC's LLNs and wholesale billing, the Proposed Order declines to require SBC to pay remedies on two performance metrics that measure SBC's performance on these important issues.

The Proposed Order's conclusion that performance measures ("PMs") in question -- Michigan ("MI") 12 and 13 – should not be "remedied" measures conflicts with the recognition that there are on-going problems with LLNs and wholesale billing. In order to cure that internal inconsistency, the Proposed Order should be modified to find that PM MI 12 and 13 should be changed from diagnostic to remedied measures.

II. ARGUMENT

Exception Number One: The Proposed Order Erred By Adopting SBC's So-Called Compromise Remedy Plan For Section 271 Purposes.

The Proposed Order finds that SBC's "compromise" remedy plan should be adopted for Section 271 purposes. The Proposed Order would adopt SBC's compromise plan despite the fact that it would severely water-down the consequences to SBC for failing to comply with the wholesale service performance measures to which SBC agreed. The Proposed Order attempts to show that the compromise remedy plan really is not much different from the 01-0120 remedy plan. But the Proposed Order fails to recognize the record evidence that demonstrates that the two plans are materially and substantially different.[1] On this score, the Commission need only ask itself if the two remedy plans are so similar then why is SBC so strenuously attempting to change the Docket 01-0120 plan? The answer is simple – if the compromise plan is adopted, SBC will face negligible remedy payments when it fails to meet wholesale performance measures. As a result, remedy payments for substandard wholesale service will represent nothing more than a cost of doing business to SBC while Competitive Local Exchange

[1] AT&T's Brief on Exceptions contains an extensive discussion of the reasons why SBC's compromise plan is materially and substantially different than the Docket 01-0120 plan. WorldCom concurs in all of AT&T's arguments concerning the remedy plan issue as well as AT&T's proposed replacement language on this issue.

Carriers ("CLECs") will be impaired in their ability to compete in the local market as a direct result of SBC's subpar wholesale performance. Without adequate teeth, the remedy plan will be wholly inadequate to assure that SBC will provide adequate wholesale service after SBC receives authority to provide in-state interLATA services.

In addition, the record in this proceeding is replete with evidence that SBC's compromise plan does not fulfill the FCC's criteria for evaluating performance measures and remedy plans.[2] Conversely, SBC failed to build any record to demonstrate how its compromise plan meets the FCC criteria. For this reason alone, the Commission should reject SBC's compromise plan.

Compounding the Proposed Order's error of ignoring substantial record evidence concerning the differences between the compromise plan and the 01-0120 remedy plan is its apparent presumption that SBC's compromise plan is reasonable. As the Commission made clear in Docket 01-0120 Order and the Alternative Regulation Order, it is the 01-0120 remedy plan that must be the starting point and basis of any plan moving forward. Instead of heeding the Commission's admonitions that the 01-0120 plan is the center point of the analysis, the Proposed Order starts from the faulty premise that SBC's compromise plan is reasonable and places the burden on other parties to demonstrate that it is not. Thus, the Proposed Order's approach also contravenes the Commission's requirement that SBC is the party that bears the burden of proof in this proceeding[3] by effectively shifting the burden of proof from SBC to the CLECs and Staff.

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[2] *See* Staff witness Dr. Melanie Patrick Aff., ¶¶24 – 72; WorldCom Ex. 7.1 (Kinard Phase 2 Rebuttal Affidavit), ¶26; AT&T witness Dr. Kalb Affidavit, ¶¶41 - 50; Reply Affidavit, ¶8.

[3] *Illinois Commerce Commission On its Own Motion, Investigation of Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996*, Order Initiating Investigation, Docket 01-0662, October 24, 2001 ("Investigation Order"), pp. 4, 5.

According to the Proposed Order, the Commission shouldn't maintain the remedy plan that it approved in Docket 01-0120 because failure to meet with performance measures could result in SBC Illinois having to make remedy payments of $3 million per month, or approximately $36 million annually. The ALJ expresses the concern that the potential of such payments "suggests a level of unfairness."[4] In fact, the Proposed Order's entire analysis of the compromise remedy plan hinges on the ALJ's impression that the potential remedy payments that SBC may be required to make if it fails to meet the wholesale service quality standards to which SBC has agreed could be excessive. This is reflected in the ALJ's statement that the amount of remedy payments SBC could face as a result of the 01-0120 remedy plan "is over nine times the amount of payments that would have been found sufficient by the FCC for purposes of section 271."[5]

The Proposed Order buys hook, line and sinker SBC's arguments that remedy payments under the 01-0120 plan are excessive, punitive and unnecessary because SBC's wholesale performance is good. As discussed in further detail below, these are the same arguments that SBC used to attack the retail service quality remedies that the Commission adopted in the Alternative Regulation proceeding. The Commission was not swayed by these arguments in the Alternative Regulation proceeding, and there is no reason it should be persuaded by the same arguments here. Indeed, the Proposed Order's rationale accepts the same arguments that the ALJs in the Alternative Regulation proceeding considered and relied upon in recommending that the Commission grant rehearing on the Commission's decision to adopt retail performance measure remedies

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[4] Proposed Order, ¶ 3437.

[5] *Id.*

that could result in SBC making much greater payments for retail service quality failure than SBC would face for wholesale service quality failures under the Docket 01-0120 remedy plan. Just as the Commission declined to adopt the retail service quality remedy recommendations of the ALJs in Alternative Regulation proceeding, so to should the Commission disregard the ALJ's recommendation on the wholesale service remedy plan in this proceeding.

How important is service quality and what has the Commission said is necessary to assure a minimum level of service quality? Certainly the Commission's view of these issues is much different than the view reflected in the Proposed Order. Indeed, the ALJ's findings in this proceeding concerning the need for adequate remedies is directly at odds with the Commission's very recent determinations with respect to what it views as adequate remedies to assure a minimum level of retail service quality. In the Alternative Regulation proceeding, the Commission adopted various remedies designed to provide SBC with appropriate incentives to meet two straight-forward retail performance measures, including the requirement that SBC install new service within 5 business days and the requirement that SBC repair a retail customer's service within 24 hours from the time that SBC receives notice of an out of service condition. The incentives are realized in part through the "Q" factor – a calculation contained in SBC's alternative regulation plan formula that can result in tens of millions of dollars in rate reductions should SBC's service quality with respect to these two performance measures. In making it's finding, Commission stated:

> Going forward, we will adopt a modified version of Staff's alternative proposal to leave the Q in the Price Cap formula. As recognized by Staff's proposal, Installation within 5 Business Days and OOS>24 are the two most important standards embodied in the incentive structure. Thus,

the Q factor will be assigned a value of 2, as suggested by Staff, for these two measurements when Ameritech misses the benchmarks. The remaining measures included in the incentive scheme will be assigned a value of 0.25 for each benchmark Ameritech misses. Further, we assign a value of zero for each of the benchmarks that Ameritech meets. This incentive structure recognizes that the value of 0.25 utilized in the Plan's initial term was not sufficient in all instances and must be increased. Furthermore, to recognize the harmful effects of continuing service quality problems, the value of a missed benchmark will rise by a factor of 0.25 for any year of the plan that the Company has missed the previous years' benchmark. The forewarned escalation in penalties gives the Company notice that it must make the necessary investments so that it can avoid incurring penalties in the future. Also, if Ameritech misses the benchmark for any service quality measure in two consecutive years, the Commission may, on its own motion, initiate an investigation to determine whether the incentive structure adopted herein is sufficient in maintaining service quality or to determine whether allowing Ameritech to continue operating under alternative regulation remains in the public interest.[6]

Not only did the Commission view this price cap formula penalty necessary to ensure retail quality of service, it further noted that additional penalties were necessary and appropriate beyond those generated by the Q factor. Specifically, the Commission found that an additional $30 million dollars in potential penalties is needed to assure adequate performance with respect to a single benchmark. The Commission stated:

Finally, the OOS>24 hrs. performance measure is a special case. It has, and continues to warrant special attention. The Commission Order in Docket No. 98-0555 threatened Ameritech with a $30 million penalty for missing the benchmark based on past failures. Unfortunately, even this did not provide Ameritech with sufficient incentive to meet its OOS>24 obligation - and Ameritech paid this penalty for subsequently missing the benchmark. Therefore, we will incorporate this penalty into the Plan and carry forward this $30 million penalty adopted in Docket No. 98-0555 for each following year of the Plan. This penalty is separate and distinct from the penalties arising out of the Q factor, and if Ameritech's service quality triggers this penalty, credits will be remitted to customers as directed by the Order in Docket No. 98-0555.[7] We take notice of our order in that

[6] *Illinois Bell Telephone Company Application for Review of Alternative Regulation Plan,* Docket Nos. 98-0252, 98-0335 and 00-0764 (Consol.), Order, issued December 30, 2002 ("Alternative Regulation Order"), at p. 182.

[7] See ICC Order in Docket No. 98-0555 at 24.

docket and the basis for our setting on such amount, i.e., that it is the last sum equated with meeting compliance with this service obligation. However, since this amount was not sufficient in practice to provide the correct incentives to Ameritech, we will adopt it in addition to the incentive structure associated with the Q factor.

The Commission reached these conclusions despite the fact that SBC is obligated to provide automatic credits and payments to its end user customers under Section 13-712 of the Illinois Public Utilities Act ("IPUA") when it fails to meet those same performance measures. Thus, to ensure a minimum level of retail service quality, the Commission has imposed upon SBC financial incentives that could require significant reductions in rates it can charge, plus a $30 million dollar penalty, plus automatic penalties that directly benefit individual customers – all related to two performance measures. The Commission summed up the need for such incentives as follows:

> In the final analysis, as required by Section 13-712(c), we have taken into account the potential penalties associated with Section 13-712 when establishing the modified incentive structure discussed herein. Admittedly, this is an imprecise science since the amount Ameritech will compensate customers is directly affected by the service quality Ameritech provides in the future. However, it is likely that the Commission would have instituted different or stiffer penalties for service quality degradation absent the provisions of Section 13-712. For instance, we established a 0.25 Q factor for missed benchmarks other than installation and OOS despite evidence showing that this equates to approximately $2.625 million in rate reductions[8] as opposed to approximately $ 4 million in rate reductions required in previous years of the Plan (due to services being reclassified as competitive and removed from the plan – along with the associated revenues). Additionally, Ameritech's past failure to comply with the OOS standard despite a $30 million penalty (in addition to the rate reduction required by the Price Cap Index) for doing so suggests that we have yet to find the correct financial incentive level for Ameritech. Allowing Ameritech to net credits required under Section 13-712 from penalties required under Section 13-506.1 would render one of these provisions meaningless, thereby raising serious questions of whether Ameritech would possess the necessary incentive to

[8] Staff Witness Koch Direct at 17.

> maintain service quality as obligated by the law. We therefore decline to allow Ameritech to offset payments made pursuant to Section 13-712 from those made pursuant to Section 13-506.1 of the Act.[9]

The Commission made it abundantly clear in the Alternative Regulation proceeding the importance it assigns to service quality:

> In closing out this section of our Order, we remind AI that the maintenance of service quality is of the utmost importance to the health, safety and welfare of the people of Illinois as well as to the State's economy. Recent legislative action confirms this view. Accordingly, we admonish Ameritech to bring all necessary resources to bear in resolving any service quality problems. A failure to do so will cause us to revisit this issue.

SBC filed an Application for Rehearing of the Commission's Alternative Regulation Order assailing the Commission's retail service quality penalties as excessive and arbitrary. The ALJs in the Alternative Regulation proceeding summarized SBC's Application for Rehearing in that matter as follows:

> SBC- Illinois raises the issue of excessive penalties evolving from the Order with respect to two (2) specific performance measures. According to the Company, the Order increases the service quality penalties for (1) the repair measure (Out of Service Over 24 Hours or "OOS>24") and (2) the installation measure (Installation Within Five Business Days) *eightfold.*
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> SBC-Illinois points out that whereas the original <u>1994 Alt Reg Order</u> established a Q factor adjustment of 0.25 per missed measure annually (which equates to a $2.65 million permanent rate reduction), action taken in the instant Order increases the adjustment to 2.00 for repair and installation (which equates to a *$21 million permanent rate reduction* for any year that the measure is missed).
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> Further, this penalty is imposed on top of a *$30 million penalty* for OOS>24 that was adopted in the Commission's Order approving the SBC/Ameritech merger. <u>Merger Order</u> at 200.
>
> Further still, these penalties are in addition to the other customer credits and penalties imposed by Section 13-712 of the Act and the Commission's

[9] Alternative Regulation Order, p. 184.

Part 730 and Part 732 service quality rules. 220 ILCS 5/13-712; 83 Ill. Admin. Code Parts 730, 732.

As such and on the whole, SBC-Illinois argues, the increases in the Q factor are excessive and punitive.

These penalties, the Company maintains, dwarf, by *many* orders of magnitude, any penalties automatically assessed on other carriers in Illinois that experience service quality problems.[footnote omitted] The punitive nature of this penalty structure, SBC-Illinois points out, is further exacerbated by the fact that it is triggered by even the slightest error on SBC Illinois' part.

For example, under the repair standard, SBC- Illinois must restore 95 percent of all out-of-service conditions within 24 hours. If the Company's performance in a given year is 94.99 percent, instead of 95 percent, the entire $51 million rate reduction would be required.

Similarly, with respect to the installation standard and where 90 percent of service orders must be completed within five business days, if SBC Illinois were to only complete 89.99 percent of these orders within five business days, instead of 90 percent, the entire $21 million rate reduction would be imposed on the Company. To impose such draconian penalties in utter disregard for the minor extent of the infraction, the Company asserts, is arbitrary and capricious. This is especially the case, SBC-Illinois argues, given that the Company's service is now, and has been for two years, excellent.

There is no continuing pattern of conduct on record, the Company maintains, to justify these penalty levels. SBC Illinois contends that it brought its installation and repair performance to its current high level under both the *existing* Plan structure and the $30 million repair penalty prescribed in the Merger Order. Given that these penalties were shown sufficient to provide the proper incentives to the Company to correct any existing service quality problems, SBC-Illinois asserts that there is no rational basis for increasing the Plan's penalties at all - much less *eightfold*.

The Order's escalation of the Q factor adjustments, the Company maintains, also ignores recent changes in the Commission's authority to ensure adequate service quality under Section 13-712 of the Act and the Commission's Part 730 and Part 732 service quality rules.

Today, Section 13-712 of the Act and Part 732 of the Commission's rules provide for direct compensation of consumers for installation or repair delays or for missed appointments. 220 ILCS 5/13-712; 83 Ill. Admin.

Code Part 732. Moreover, if SBC Illinois (or any other carrier) violates the Commission's Part 730 or Part 732 rules, Sections 13-303, 13-304 and 13-305 of the Public Utilities Act, all of which were adopted in the 2001 amendments to the Act, permit the Commission to levy civil penalties and, if necessary, to seek injunctions or writs of mandamus. See 220 ILCS 5/13-303, 13-304, 13-305 (effective June 30, 2001).

To be sure, SBC-Illinois asserts, all of the statutory changes have decreased the need for substantial service quality penalties in the Plan and must be considered in the decision making process. The Order, SBC-Illinois points out, does *not* account for the cumulative impact of these legislative-driven changes and, therefore, is arbitrary and capricious. On all these counts, the Company asserts, the service quality penalty structure imposed in this Order for the measures discussed, needs to be changed.

The ALJs would remind the Commission that the Order adopts a penalty scheme wholly different from the HEPO or PEPO. This means that all parties were left unable to address the matter at hand in their exceptions arguments.

The ALJs firmly believe and have always maintained that the whole of the statutory scheme set out by the General Assembly must be considered in setting out an appropriate penalty scheme. Thus, it is important to examine not only Section 13-506.1 (which directly implicates the SBC-Illinois Plan) but also the newly enacted provisions such as 13-712 that do not exclude the Company and address matters that overlap the Plan. The Order recognizes this in one part and for one purpose (rejecting direct compensation proposals for the Plan because of Section 13-712). The Order, however, wholly and inconsistently, omits such analysis in another part (failing to reconcile the direct compensation to be paid out under Section 13-712 with Plan penalties for the same exact measures).

Staff's proposal, on which the Order largely rests, did not take account of the new law, i.e., Section 13-712. It also did not consider or analyze the severity of the penalty mechanism in the instance of a minor infraction. The severity of the violation, however, is a concept that the Governmental and Consumer Intervenors well recognized (Order at 171) and this should be factored into the Commission's analysis. In its current state, the Order does not consider (either accept or reject) a gradual escalation in penalties to correspond with the severity of the situation, or take account of other remedies. Based solely on the arguments at hand, there also appears to be a fatal mismatch with respect to a penalty proven to be an effective incentive and what the Order would impose.

Even on a cursory review, it appears that the penalties put at issue are set out without any studied analysis of the end result, or the effect of all

> relevant and impinging legal and factual considerations, or any assessment of the suitability for meeting the main objective. Under the circumstances, rehearing is both warranted and strongly recommended.
>
> The ALJs recommend that rehearing on the instant issue be granted.[10]

The Commission considered the ALJ's recommendation concerning SBC's Application for Rehearing on the retail service quality issue in the Alternative Regulation proceeding and declined to accept it. As a result, SBC's Application for Rehearing on the retail remedy issue was denied by operation of law.[11] Hence, the Commission stuck with its determinations concerning the level of potential remedies that are necessary to assure SBC provides a minimum level of retail service quality – and to do so based on two straight-forward retail service quality measures.

The tie between the incentives necessary to assure retail and wholesale service quality is supported by the record evidence. As WorldCom witness Ms. Kinard observed, SBC witness Mr. Ehr's response to WorldCom's data request on the Illinois Commission's requirements of remedies to ensure that SBC Illinois serves its own retail customers adequately. The responses indicated that SBC Illinois was ordered to pay a $30 million remedy (as credit to customers) as incentive to improve on poor year 2000 performance in one metric area -- customers who were out of service more than 24 hours.

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[10] Memorandum from Adminsitrative Law Judges Eve Moran and Philip A. Casey to the Commission regarding Illinois Bell Telephone Company Application for Review of Alternative Regulation Order, dated February 7, 2003 ("ALJ Retail Service Quality Memo"), pp. 3-5 (emphasis in the original). WorldCom requests that the ALJ and the Commission take administrative notice of this memorandum pursuant to Section 200.640 of the Commission's Rules. The ALJ Retail Service Quality Memo is appended to this Brief on Exceptions and identified as Attachment A.

[11] *See* Certificate of Commission Action, denying specified Application for Rehearing issues and specifying that the Commission was taking no action with respect to other issues, including retail service quality issues, dated February 14, 2003. If the Commission fails to grant or deny rehearing within 20 days of receiving an application for rehearing, the application is deemed denied. 220 ILCS 5/10-113.

On harms done to CLECs in multiple wholesale performance measure areas (SBC Illinois did not provide the number of measures missed as requested), SBC Illinois says it paid only $12.5 million in remedies for January to November 2002. Ms. Kinard noted that WorldCom is concerned that although the question sought a projection of the "compromise" plan that SBC Illinois instead used remedies actually paid under the original merger plan and existing plans in use.[12] Nevertheless, Ms. Kinard's affidavit supports the fact that the Illinois Commission clearly realizes that it takes a large remedy to motivate SBC Illinois to fix one retail problem area.

In addition, WorldCom witness Ms. Kinard posited that larger amounts are arguably needed to motivate SBC Illinois to fix multiple problem areas causing inefficiencies that burden CLECs and which result in discrimination that hinder CLECs trying to compete in the local market. In fact, it is reasonable to assume that the remedies required to motivate SBC Illinois to treat its competitors fairly will need to have even more of a bite than those focused on improving treatment of SBC's retail customers to guard against SBC providing inferior wholesale service to CLECs and then telling customers that the shouldn't consider moving to competitors' services because they are inferior in quality.[13] The 01-0120 plan of all the SBC Illinois remedy plan options, including the untried "compromise" plan, is the only one that appears to have adequate remedies to motivate performance improvements and ensure that SBC does not backslide on performance once it receives Section 271 approval from the FCC. Indeed, based on

[12] WorldCom Ex. 7.0 (Kinard Initial Affidavit), p. 11.

[13] *Id.*, p. 12.

the Commission's pronouncements about what is required to assure retail quality of service, the 01-0120 plan needs to be strengthened, not watered-down.

It is clear that the remedies mandated by the remedy plan that the Commission approved in Docket 01-0120, which apply to over one hundred performance measures, are less stringent and pose substantially lesser potential remedy payments than what the Commission deemed necessary to provide SBC with adequate incentive to meet two retail performance measures. Since the wholesale performance measures are designed to ensure that SBC provides wholesale service that is at least equal in quality to or at parity with the service it provides to its retail customers, it follows that the incentive for SBC to provide a minimum level of wholesale service quality should be at parity with the incentives that SBC has to provide a minimum level of retail service quality. Clearly, the Commission has spoken regarding the incentives it believes is necessary for retail and those are greater than what it has provided for wholesale in Docket 01-0120.

For all of these reasons, as well as the reasons set forth in AT&T's Brief on Exceptions, WorldCom takes exception to the Proposed Order's determination that SBC's so-called compromise remedy plan serves the public interest and that it should be the remedy plan for Section 271 purposes. For these reasons, WorldCom respectfully requests that the Administrative Law Judge's Proposed Final Order On Investigation be modified as reflected in AT&T's exception language on this issue, in which WorldCom concurs and adopts as its own.

Exception Number Two: The Proposed Order Erred By Failing To Require SBC To Pay Remedies On Performance Measures Michigan 12 and 13.1.

The Proposed Order erroneously concludes that multiple penalties will apply to the same failed performance if the Commission requires SBC to pay remedies on PM MI 12 and PM MI 13, as WorldCom requests.[14] That finding is simply inaccurate. Moreover, the Proposed Order indicates that "we do not know, nor are we told on what basis the Michigan Commission concluded as it did."[15] That too is inaccurate.

The record demonstrates that there is no overlap between the aspects of PM MI 13 and MI PM 13.1 that WorldCom requests be remedied. In its March 25, 2003 Brief in this proceeding, WorldCom explained that remedies are required for metrics MI 12 and MI 13.1 to motivate improvement in two problem areas. MI 12 motivates parity in clearing orders that error out of billing. CLECs need these billing and the customer service records associated with them updated regardless of what the billing cycle is so they own the customer right away and can provide answers about service and log in trouble reports promptly. The billing completeness measurement, PM 17 does not serve the same purpose. It only enforces to the degree that matters have not gotten so bad that the charges do not show up on the next carrier bill to make auditing easier for CLECs. While SBC Illinois has a disaggregation for customer as well as CABS bills, the customer segment does not ensure the billing errors are captured quickly enough to ensure timely update of the customers underlying carrier and confusion and errors can occur in serving that customers service question and maintenance needs without such timely updates.

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[14] Proposed Order, ¶ 3529.

[15] Proposed Order, ¶ 3531.

WorldCom further explained that, yes, if delays on closing to billing are really bad for orders placed at the end of the billing cycle the PM 17 metric will be missed. But even excellent performance on this metric does not address the behavior that MI 12 is trying to motivate. SBC Illinois affirming that all orders, including late ones are included, is not relevant to the behavior each metric is designed to motivate. One metric can be missed and not the other not. If SBC clears or errors as quickly as it clears its own, then MI 12 is not missed even if PM 17 is missed. These facts clearly show that two different behaviors are being measured and SBC has control over whether it misses none, one, or both of metrics PM 17 and PM 12. Covering both metrics with remedies will ensure that both are met, as the CLEC requires.[16]

Further, remedies should also be applied at the low level to 13.1 Mechanized Line Loss Report Average Delay Days, when they exceed 4 days on average. At page 51 of WorldCom's Brief, it specifically noted that the Michigan Public Service Commission's order quoted in Ms. Kinard's rebuttal affidavit at page 8 did not make CLECs agree to remove remedies from MI 13 in granting WorldCom's petition there:

> The Commission concludes that WorldCom's proposal should be adopted. Although both PM MI 13 and PM MI 13.1 relate to line loss notifiers, they do not measure the same thing. WorldCom proposes that remedies be imposed for PM MI 13.1 when the average delay is more than four days, which PM MI 13 measures the percentage of notifications returned within one business day. *Because line loss notification is so important to the development of a competitive market (due to the effect on customer relations) and because line loss notification has been a continuing problem, the Commission concludes that it is appropriate to impose remedies for both PM MI 13 and PM MI 13.1.*[17]

[16] *See* WorldCom Ex. 7.0 (Kinard Initial Affidavit), pp. 24-26; WorldCom Ex. 7.1 (Kinard Rebuttal Affidavit), pp. 8-9; WorldCom Brief, pp. 51-52.

[17] *See* WorldCom Ex. 7.1 (Kinard Rebuttal Affidavit), p. 8; MPSC Order at 4 (emphasis added).

Based on this, WorldCom urged the Commission to join the Michigan Commission in making PM MI 13.1 a remedied measure because moving the medium remedies proposed by staff, and agreed to by SBC Illinois, from MI 13 to MI 13.1 would not capture the whole picture of delays in receiving line loss reports. No more than 3 percent should be late at all, and those that are late should not be so late that they are beyond a 4 day average, making it more likely that the CLEC will bill a departed customer ensuring that the customer will never return. WorldCom had originally proposed high remedies for both metrics but moved to accepting low remedies on MI 13 and seeking low remedies for MI 13.1 in the collaboratives. At that time, SBC Illinois' line loss performance had improved, but now that it is declining again as WorldCom witness Litchtenberg and other CLEC witnesses have noted, higher remedies should be imposed on MI 13 along with the need for at least low levels for MI 13.1.

For all of these reasons, the record is clear that requiring SBC to pay remedies for both MI 13 and MI 13.1 will not result in SBC paying two remedies for the same poor performance. As stated in its brief, it is important that both be remedied because of continuing line loss problems.

Indeed, it is uncontested that SBC continues to have problems with SBC's LLNs and wholesale billing, the activities that would be impacted by the measures for which WorldCom seeks remedies. The Proposed Order correctly observes the continuing LLN problems.[18] The Proposed Order further recognizes that SBC continues to experience problems with its wholesale billing OSS.[19] Nevertheless, the Proposed Order declines to

[18] Proposed Order, ¶¶ 1312-1315.

[19] *Id.*, ¶¶ 1321-1333.

require SBC to pay remedies on two performance metrics that measure SBC's performance on these important issues. WorldCom submits that the Proposed Order's conclusion that PMs in question – PM MI 12 and 13.1 – should not be "remedied" measures conflicts with its recognition that there are on-going problems with LLNs and wholesale billing and the record evidence that requiring remedies to be paid on these measures will not result in SBC paying twice for the same poor performance. For all of these reasons, WorldCom respectfully requests that the Proposed Order be modified to find that PM MI 12 and 13 should be changed from diagnostic to remedied measures.

For all of the forgoing reasons, WorldCom respectfully recommends that paragraphs 3529 thorough 3535 be modified as reflected in the attached Exceptions.

Exception Number Three: The Proposed Order Erred By Finding SBC In Compliance With Checklist Item Number 2 Despite Its Recognition Of Continuing Billing And Line Loss Problems.

The Proposed Order correctly recognizes that SBC continues to experience serious problems with its wholesale billing and LNNs.[20] Nevertheless, the Proposed Order determines that SBC complies with Section 271 requirements for these items because, in part, SBC will provide updates on its performance and will implement a Line Loss Plan and Billing Auditablity and Dispute Resolution Plan of record in the manner finalized by the Michigan Public Service Commission. In so finding, the Proposed Order ignores the FCC's determination that Bell Operating Companies ("BOCs") cannot rely on "paper promises" of future compliance in Section 271 proceedings. A BOC's promises of future performance have "no probative value" as to present compliance with section 271. "Paper promises" cannot satisfy the BOC's burden of proof (except that prospective

[20] *Supra*, notes 18 and 19.

assurances are required to demonstrate compliance with section 272). The BOC decides when to file, and it must be in full compliance at that time.[21] SBC is not yet there with respect to checklist item 2. The Proposed Order, however, fails to recognize this.

To be sure, it is ironic that the Proposed Order finds that SBC's OSS billing functions comply with Section 271 requirements based in part on SBC's Michigan Billing Auditablity and Dispute Resolution Plan when SBC withdrew its request that the FCC grant it authority to offer long distance service in Michigan, fearing the agency would reject its petition because of, among other things, concerns about that SBC's system for wholesale billing of Unbundled Network Elements ("UNEs"), combinations of UNEs, interconnection and transport and termination of traffic does not meet Section 271 requirements. SBC withdrew the Michigan application on the day the FCC was set to issue an order denying its Michigan application.

In a press release dated April 16, 2003, FCC Chairman Michael Powell said SBC's application in his view "generally met" requirements of federal law, but there were "important" outstanding issues that prevented FCC approval. According to Chairman Powell, "Perhaps the most troubling of these issues relates to billing. Despite extensive examination of the record supporting these applications, questions remain regarding whether SBC is currently providing wholesale billing functions for competitive LECs in a manner that meets the requirements of our existing precedent."[22]

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[21] Mich. Order ¶¶ 55-59; SC Order ¶ 38; NY Order ¶ 37; TX Order ¶ 38.

[22] *See* SBC Opposition to Joint CLEC Emergency Motion, Attachment 1, Statement of FCC Chairman Michael Powell on Withdrawal of SBC's 271 Application for Michigan, dated April 16, 2003.

The other issues on which the FCC was prepared to reject SBC's Michigan 271 application are not clear since the application was withdrawn before the FCC issued an order. As Chairman Powell's statement makes clear, there was more than just the billing issues that remained unresolved. What Chairman Powell's statement and SBC's withdrawal of its Michigan application does make clear is that the Proposed Order's clearly erred in finding that SBC's billing OSS complies with Section 271 is flawed. WorldCom submits that other problems identified in the record of this proceeding -- including long-standing and continuing LLN dysfunctions, change management infirmities and performance measure data integrity problems – warrant much closer review than the Proposed Order currently provides.

Based on the foregoing, and at a minimum, WorldCom submits that the Proposed Order must be modified to recognize that SBC's wholesale billing and LLN performance do not meet Section 271 requirements. Accordingly, WorldCom respectfully recommends that the paragraphs of the Proposed Order associated with these issues be modified as reflected in the attached Exceptions.

III. CONCLUSION

WHEREFORE, for all of the reasons stated above, WorldCom respectfully requests that the Proposed Order in the above-captioned proceeding be revised consistent and in accordance with the foregoing exceptions prior to being submitted to the Commission for consideration.

Respectfully submitted,

WorldCom, Inc.

Dated: April 18, 2003 By: Darrell S. Townsley /DLK with permission

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One of Its Attorneys

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	))	
	)	Docket No. 01-0662
Investigation concerning Illinois Bell Telephone Company's compliance With Section 271 of the Telecommunications Act of 1996	))))	Phase 2

NOTICE OF FILING

Please take notice that on April 18, 2003, I caused to be sent by Federal Express Next Business Day Delivery, postage prepaid, the original of WorldCom, Inc.'s Brief on Exceptions and Exceptions in Phase 2 of the above-captioned matter to the Chief Clerk of the Illinois Commerce Commission, Elizabeth Rolando, 527 E. Capitol, Springfield, Illinois 62701.

Darrell Townsley

Darrell S. Townsley

CERTIFICATE OF SERVICE

I, Darrell S. Townsley, certify that I caused to be served from WorldCom, Inc.'s Chicago, Illinois offices a copy of its Brief on Exceptions and Exceptions in Phase 2 of the above-captioned docket, together with a Notice of Filing, upon all parties on the attached service list on this 18th day of April, 2003, by electronic mail.

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